

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Community Broadcast Group, Inc.)	Facility I.D. No. 51913
Licensee of Station WMNT-CA)	NAL/Acct. 201441420022
Toledo, Ohio)	FRN: 0019933373

FORFEITURE ORDER

Adopted: September 10, 2014

Released: September 10, 2014

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Commission's rules, we find that Community Broadcast Group, Inc., licensee of Station WMNT-CA, willfully and repeatedly violated the Commission's Rules by: (i) failing to file electronically the Station's quarterly TV issues/programs lists, in violation of Section 73.3526(e)(11)(i)¹; (ii) failing to file timely with the Commission the Station's Children's Television Programming Reports, in violation of Section 73.3526(e)(11)(iii)²; and (iii) failing to report certain violations in the renewal application, in violation of Section 73.3514(a).³ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of Ten Thousand Dollars (\$10,000).

II. BACKGROUND

2. The Video Division issued a Notice of Apparent Liability ("NAL") for Forfeiture on July 3, 2014.⁴ The NAL notified the Licensee that its failure (i) to file electronically the Station's quarterly TV issues/programs lists for four quarters constituted an apparent willful and/or repeated violation of Section 73.3526(e)(11)(i); (ii) to file with the Commission in a timely manner its Children's Television Programming Reports for three quarters constituted an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii); and (iii) to report the violations constitutes an apparent willful and/or repeated violation of Section 73.3514(a).⁵ The Video Division concluded that a \$10,000 forfeiture was appropriate for these willful and/or repeated

¹ 47 C.F.R. § 73.3526(e)(11)(i).

² 47 C.F.R. § 73.3526(e)(11)(iii).

³ 47 C.F.R. § 73.3514(a).

⁴ *Community Broadcast Group, Inc.*, Notice of Apparent Liability for Forfeiture, DA 14-955 (Vid. Div. 2014). As the Licensee points out in its Response, Licensee Response to NAL (Aug. 1, 2014) at 1, the NAL contained two clerical errors. Those errors were corrected in an *Erratum* released August 11, 2014. The errors, since corrected, provide no basis to reduce or cancel the forfeiture.

⁵ 47 C.F.R. § 73.3514(a).

violations.⁶

3. Licensee filed a response on August 1, 2014, in which it did not attempt to rebut the claimed violations but nonetheless asserted that the proposed forfeiture amount should be cancelled or reduced.⁷

III. DISCUSSION

4. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁸ In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.⁹ The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.¹⁰ As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture for repeated violations of Sections 73.3526(e)(11)(i) & (iii) and Section 73.3514(a) of the Commission's rules. We ultimately conclude that the forfeiture amount should not be reduced from the amount proposed in the NAL.

5. The Community Broadcasters Protection Act requires that Class A television stations comply with all rules applicable to full-power television stations except for those rules that could not apply for technical or other reasons.¹¹ The Commission rules establish that Class A licensees must (i) offer informational and educational children's programming; (ii) prepare and place in a public inspection file quarterly Children's Television Programming Reports; and (iii) electronically file those reports with the Commission.¹²

6. The Licensee does not dispute that the violations alleged in the NAL occurred. These deficiencies, regardless of the cause, constitute willful and/or repeated violations of the relevant Commission rules.

⁶ *Community Broadcast Group, Inc.*, Notice of Apparent Liability for Forfeiture, DA 14-955 (Vid. Div. Jul. 3, 2014).

⁷ Licensee Response to Notice of Apparent Liability ("Licensee Response") (Aug. 1, 2014) at 1-2.

⁸ 47 U.S.C. § 503(b)(1) (A) & (B); 47 C.F.R. § 1.80(a)(1) & (2). The Commission may assess a forfeiture order for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, (2001) (issuing a Notice of Apparent Liability for a cable television operator's repeated violations of the Commission's signal leakage rules). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁰ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

¹¹ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594-1501A-598 (1999), *codified at* 47 U.S.C. § 336(f).

¹² *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6366 (2000); 47 C.F.R. § 73.3526 (a)(2) & (e)(11)(iii).

7. Commission policy establishes a base forfeiture amount of \$3,000 for failure to file a required form.¹³ In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(E), which include “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” In the NAL, the Commission proposed a forfeiture amount of \$10,000. Licensee argues that the forfeiture amount should be reduced or cancelled because its rule violations were not willful but merely inadvertent error.¹⁴

8. We reject Licensee's assertions that its rule violations were not willful. However, as an initial matter, we note that the Act and our rules require that conduct be either willful *or* repeated.¹⁵ Licensee does not argue in the response that its actions were not repeated, and therefore the question of whether the violations were willful is largely academic.

9. Nonetheless, we disagree with Licensee's assertions. As explained in the NAL, Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act.¹⁷ The Commission has so interpreted the term in the Section 503(b) context.¹⁸ “Willful” does not require a finding that the rule violation was intentional in the context of a forfeiture action.¹⁹ Instead, willful “means that the violator knew that it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the Rules.”²⁰ We conclude that the Licensee's actions were willful because it is expected to comply with Commission rules and it certified compliance with those Rules.²¹ Licensee's failure to report the violations in the renewal application was equally willful, as the Licensee certified that no such violations had occurred.²²

10. We thus conclude there is no basis to reduce or cancel the forfeiture.

¹³ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

¹⁴ Licensee Response at 1-2.

¹⁵ 47 U.S.C. § 503(b), 47 C.F.R. § 1.80(a) (emphasis added); *Southern California*, 6 FCC Rcd at 4388.

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982)

¹⁸ See *Rocky Mountain Broadcasting Co.*, Forfeiture Order, 25 FCC Rcd 5210, 5212 (Vid. Div. 2010); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹⁹ *Rocky Mountain Broadcasting Co.*, 25 FCC Rcd at 5212.

²⁰ *Id.* at 5212 (citing *See Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387.

²¹ File No. BRTTA-20130605ACH.

²² *Id.*, Section IV, Question 3.

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1)&(2) of the Commission's rules,²³ Community Broadcast Group, Inc. SHALL FORFEIT to the United States the sum of Ten Thousand Dollars (\$10,000) for repeatedly violating Section 47 U.S.C. § 336(f)(2)(A)(ii) and 47 C.F.R. §§ 73.3526(e)(11)(i) & (iii) and 73.3514(a).

12. In the event that the Licensee wishes to revert WMNT-CA to low power television status, the Licensee need only notify us of this election and request a change in status for the station.²⁴ Should the Licensee elect to revert the station to low power status, the Licensee would no longer be liable for the forfeiture amount described herein.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 (h) of the Commission's rules within thirty (30) calendar days after the release date of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended. The Licensee shall send electronic notification of the payment to Peter Saharko at peter.saharko@fcc.gov on the date payment is made.

14. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the "FORF" in block number 24A (payment type code). Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

15. IT IS FURTHER ORDERED THAT a copy of this FORFEITURE ORDER shall be sent by Certified Mail Return Receipt Requested to Community Broadcast Group, Inc., P.O. Box 351896, Toledo, Ohio, 43635, and to its counsel, Jeffrey L. Timmons, Esq., 1110 Whitehawk Trail, Lawrenceville, Georgia, 30043.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²³ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1)&(2).

²⁴ See 47 C.F.R. § 73.6001(d).